

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 228 of 1988

IN

FIRST APPEAL NO. 627 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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NAVINCHANDRA K VAKANI

Versus

REGISTRAR

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Appearance:

MR BP TANNA for Appellant

MR SN SHELAT for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2, 3

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 07/12/98

ORAL JUDGEMENT [ PER : B.C.PATEL, J]

Appellant, being aggrieved by the decision of learned City Civil Judge, Ahmedabad in Civil Suit No. 3999/83 decided on 9.2.1988 whereby the suit was

dismissed and confirmed in First Appeal No. 627/88 by learned Single Judge on 29.6.1988, has preferred this appeal.

The appellant was working as a Photographer in School of Science of Gujarat University, Ahmedabad on probation. It appears that the appellant addressed a letter of resignation exh.21 on 10.10.1983 which was endorsed by original defendant no.2 to the effect that the resignation be accepted and the appellant be relieved from 3.10.1983. The same was forwarded to the Registrar, Gujarat University- respondent no.1 and resignation was accepted on 13.10.1983 which was confirmed by Vice Chancellor, Pro Vice Chancellor. On facts, thus it was clear that the resignation was accepted on 13.10.1983.

It appears that the appellant, as a Photographer of the School of Science, used to frequently visit the Institute. One Devinaben R. Chhabda was a student of M.Sc. (Botany). As per the say of the appellant, on seeing frequently, he had a special feeling for her and he was tempted to write a letter. It appears that 80% students were lady students. It appears that addressing a letter to a student compelled original defendant no.2 Head of the Department to call the appellant. Learned Trial Judge has considered the evidence in detail and has held that the resignation was given willingly. There was no question of coercion or undue influence. Learned Trial Judge has pointed out after considering the evidence in detail that the appellant had written a letter to the lady student and realising the mistake and the fact that he will be exposed, out of shame, must have taken a decision to resign and not because of any coercion / undue influence. Learned Judge has considered in detail what the coercion and undue influence is. From the evidence, it transpires that the appellant was not an employee of defendant no.2. Giving of an advise cannot be said to be of a dominating character. It is also found that appellant fell sick immediately after the occurrence of the incident and telegram was forwarded on 15.10.1983. What was the nature of sickness, is not shown. The appellant did not join duty. If there was a question of threat, pressure or undue influence, immediately telegram could have been dispatched after leaving the office. There was no reason for defendant no.2 to persuade or pressurise him to resign and invite allegations against him. Learned Judge, on appreciation of evidence, found that the allegations made by the appellant were without any substance. The act of the appellant in giving resignation vide exh.21 is held to be of voluntary nature.

Learned Judge has considered Rule 10 of the Rules

relating to leave and service conditions for non-teaching staff of the University in para-23 of the judgment. We reproduce the same as under :-

"10.(a) No permanent employee shall resign his post without giving three calendar months' notice in writing.

(b) In case of employee-temporary or on probation- the period of notice shall be of one calendar month.

(c) The competent authority may, however, relieve the employee earlier. "

Learned Judge has rightly held that reading Rule:10 (a), (b) and (c), resignation can be accepted and there is no need to give any notice. The appellant wanted to see that his resignation is accepted immediately without waiting for notice period etc. and so he requested to accept the resignation immediately. Considering the note, acceptance of resignation, the notice period is being condoned. There is no question of any doubt. The reasons given by defendant no.2 as to why appellant was to be relieved on 31.10.1983, is that the costly articles were in possession of the appellant and if he was to be relieved immediately, it would have been difficult to recover the articles.

So far as genuineness of the noting made on exh.21 is concerned, learned Judge has pointed out that there were no allegations and in fact learned advocate appearing before him did not challenge the genuineness thereof. It is also required to be noted that it was not the act of defendant no.2 to accept resignation, but high officers of the University like Vice Chancellor, Pro Vice Chancellor and Registrar were required to pass orders. It appears that, therefore, rightly learned advocate did not challenge the notes made on Exh.21. Trial Court has considered the decision in the case of Raj Kumar v/s Union of India, reported in AIR 1969 SC P.180. The Apex Court has pointed out that " where a public servant has invited by his letter of resignation the determination of employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority."

In the instant case, resignation was accepted. Appellant communicated his determination of employment by handing over a letter of resignation and once resignation

being accepted, subsequently it cannot be said that before intimation being reached to him, he is entitled to withdraw the resignation.

In view of what is stated herein above, we do not find any merits in the appeal and appeal stands dismissed with no orders as to costs.

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